

## LEGAL REVIEW COMMENTS

LC#: LC0104, To Legal Review Copy, as of  
December 3, 2012

Attorney Reviewer: Jaret Coles/Julie Johnson  
Date: Dec. 7, 2012

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

#### Legal Reviewer Comments:

LC0104, as drafted, may raise potential constitutional issues associated with appropriations.

Article VIII, section 14, of the Montana Constitution provides:

Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Section 1 of LC 104, as drafted, consists of one appropriation of \$18,342,366 to the department of commerce, a state agency. The department of commerce, in turn, makes grants to the local governments identified in subsection (3) of section 1 with funds appropriated to the department. Similarly, section 5 consists of a single appropriation to the department for emergency grants. Section 6 also contains one appropriation to the department for preliminary engineering grants.

Subsection (2) of section 1 and the catchlines in Sections 1, 5, and 6 refer to "appropriations" in the plural, although the text within the sections clearly refers to a singular appropriation of money to the department of commerce. While there may be more than one grant provided for in each particular section, there is only one appropriation in each section.

LC0104, as drafted, also may raise a potential separation of powers issue in the event the executive attempted to veto a particular grant instead of the appropriation itself. The separation of powers clause of the Montana Constitution at Article III, section 1, provides:

Separation of powers. The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

**Legal Review Instructions for Agency:**

Please provide a copy of this review to the legislator that you intend to use as a sponsor of this bill draft. If you have any comments in response to this review, please provide the comments to the drafter assigned to this bill draft.

**Requester Comments:**